

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BARBARA JAYNE SNOW,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

NO: 1:14-CV-3160-RMP

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are Plaintiff Barbara Jayne Snow's Motion for Summary Judgment, **ECF No. 17**, and Defendant Carolyn W. Colvin's Motion for Summary Judgment, **ECF No. 18**. The Court has reviewed the motions, Ms. Snow's reply memorandum (ECF No. 20), and the administrative record, and is fully informed.

BACKGROUND

Barbara J. Snow protectively filed applications for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB) on March 7, 2011, alleging

1 disability since February 17, 2007, due to post-traumatic stress disorder (PTSD)
2 and attention deficit disorder (ADD). ECF No. 10-5 at 15-29, ECF No. 10-6 at 46,
3 50, Tr. 216-230, 285, 289. The applications were denied initially and upon
4 reconsideration. ECF No. 10-4 at 6-13, 18-30, Tr. 128-135, 140-152. Ms. Snow
5 requested a hearing on January 3, 2012. ECF No. 10-4 at 31-32, Tr. 153-152.
6 Administrative Law Judge (ALJ) Virginia M. Robinson held a hearing on January
7 15, 2013, at which Ms. Snow, represented by counsel, and vocational expert,
8 Trevor Duncan, testified. ECF No. 10-2 at 30-72, Tr. 29-71. At the hearing, Ms.
9 Snow amended her date of onset to January 1, 2011. ECF No. 10-2 at 22-23, Tr.
10 21-22.

11 The ALJ issued an unfavorable decision on March 15, 2013, finding Ms.
12 Snow was not disabled as defined in the Social Security Act. ECF No. 10-2 at 12-
13 23, Tr. 11-22. The ALJ found that Ms. Snow had not engaged in substantial
14 gainful activity since January 1, 2011, the amended alleged date of onset. ECF No.
15 10-2 at 14, Tr. 13. Further, the ALJ determined that Ms. Snow had the following
16 severe impairments: mental health impairments variously diagnosed as PTSD,
17 psychotic disorder not otherwise specified, depressive disorder, without psychotic
18 features, attention deficit hyperactivity disorder (ADHD), and personality disorder.
19 *Id.* In addition, the ALJ found that Ms. Snow had polysubstance/amphetamine
20 dependence in reported remission. *Id.*

1 However, the ALJ found that Ms. Snow did not have an impairment or
2 combination of impairments that met or medically equaled the severity of one of
3 the listed impairments. ECF No. 10-2 at 15-16, Tr. 14-15. The ALJ further found
4 that Ms. Snow had the residual function capacity (RFC) to perform a range of light
5 work with the following nonexertional limitations: “she is limited to performing
6 non-complex but multistep tasks involving only occasional and superficial
7 interaction with the public.” ECF No. 10-2 at 16, Tr. 15.

8 The ALJ identified Ms. Snow’s past relevant work as housekeeper and
9 cabinet assembler. ECF No. 10-2 at 21, Tr. 20. Given Ms. Snow’s age, education,
10 work experience, and RFC, the vocational expert testified that Ms. Snow was able
11 to perform her past relevant work as a housekeeper. *Id.* In the alternative, the ALJ
12 found that, considering Ms. Snow’s age, education, work experience, and RFC,
13 and based on the testimony of the vocational expert, there were other jobs that exist
14 in significant numbers in the national economy that Ms. Snow could perform,
15 including the jobs of production assembler and hand packager. ECF No. 10-2 at
16 22-23, Tr. 21-22.

1 Thus, the ALJ concluded that Ms. Snow was not under a disability within
2 the meaning of the Social Security Act at any time from January 1, 2011¹, through
3 the date of the ALJ's decision. ECF No. 10-2 at 22-23, Tr. 21-22.

4 Ms. Snow filed a request for review by the Appeals Council, which was
5 denied on August 29, 2014. ECF No. 10-2 at 2-7, Tr. 1-6. Ms. Snow filed a
6 complaint in the District Court for the Eastern District of Washington on October
7 28, 2014. ECF No. 1, 6. The Commissioner answered the complaint on February
8 15, 2015. ECF No. 9. This matter is therefore properly before the Court pursuant
9 to 42 U.S.C. § 405(g). Ms. Snow filed a motion for summary judgment on May
10 18, 2015. ECF No. 17. The Commissioner filed a cross motion for summary
11 judgment on June 29, 2015. ECF No. 18. Ms. Snow filed a reply memorandum on
12 July 20, 2015. ECF No. 20.

13 **STATEMENT OF FACTS**

14 The facts of the case are set forth in the administrative hearing transcript, the
15 ALJ's decision, and the briefs of the parties. They are only briefly summarized
16

17 ¹The ALJ references the February 17, 2007, date of onset in the bolded
18 finding number eleven, ECF No. 10-2 at 22, Tr. 21, but the remainder of the
19 decision indicates the ALJ accepted the amended onset date of January 1, 2011.
20 ECF No. 10-2 at 12, 14, 21, Tr. 11, 13, 20. Therefore, the Court attributes the
21 February 7, 2007, reference to a typographical or scrivener's error.

1 here. Ms. Snow was 51 years old at the amended alleged date of onset, January 1,
2 2011. ECF No. 10-5 at 15, Tr. 216. The last grade she completed was the sixth
3 grade in 1970. ECF No. 10-6 at 51, Tr. 290. Ms. Snow reported she stopped
4 working in February 2007 because she was fired due to her condition. ECF No.
5 10-6 at 50, Tr. 289.

7 STANDARD OF REVIEW

8 Congress has provided a limited scope of judicial review of a
9 Commissioner's final decision. 42 U.S.C. § 405(g). A reviewing court must
10 uphold the Commissioner's decision, determined by an ALJ, when the decision is
11 supported by substantial evidence and not based on legal error. *See Jones v.*
12 *Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). Substantial evidence is more than a
13 mere scintilla, but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d
14 1112, 1119 n.10 (9th Cir. 1975). Substantial evidence "means such relevant
15 evidence as a reasonable mind might accept as adequate to support a conclusion."
16 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (internal citation omitted).

17 The reviewing court should uphold "such inferences and conclusions as the
18 [Commissioner] may reasonably draw from the evidence." *Mark v. Celebrezze*,
19 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the record as a
20 whole, not just the evidence supporting the Commissioner's decision. *Weetman v.*
21 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989); *see also Green v. Heckler*, 803 F.2d 528,

530 (9th Cir. 1986) (“This court must consider the record as a whole, weighing both the evidence that supports and detracts from the [Commissioner’s] conclusion.”). “[T]he key question is not whether there is substantial evidence that could support a finding of disability, but whether there is substantial evidence to support the Commissioner’s actual finding that claimant is not disabled.” *Jamerson v. Chater*, 112 F.3d 1064, 1067 (9th Cir. 1997).

It is the role of the trier of fact, not the reviewing court, to resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational interpretation, the reviewing court may not substitute its judgment for that of the Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). Thus, if there is substantial evidence to support the administrative findings, or if there is conflicting evidence that will support a finding of either disability or nondisability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229–30 (9th Cir. 1987).

SEQUENTIAL PROCESS

Under the Social Security Act (the “Act”),

an individual shall be considered to be disabled . . . if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

42 U.S.C. § 1382c(a)(3)(A). The Act also provides that a claimant shall be determined to be under a disability only if her impairments are of such severity that

1 the claimant is not only unable to do her previous work but cannot, considering the
2 claimant's age, education, and work experience, engage in any other substantial
3 gainful work which exists in the national economy. 42 U.S.C. § 1382c(a)(3)(B).
4 "Thus, the definition of disability consists of both medical and vocational
5 components." *Edlund v. Massanari*, 253 F.3d 1152, 1157 (9th Cir. 2001).

6 The Commissioner has established a five-step sequential evaluation process
7 for determining whether a claimant is disabled. 20 C.F.R. §§ 404.1520(a)(4) and
8 416.920(a)(4). Step one determines if the claimant is engaged in substantial
9 gainful activities. If the claimant is engaged in substantial gainful activities,
10 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i) and 416.920(a)(4)(i).

11 If the claimant is not engaged in substantial gainful activities, the ALJ, under
12 step two, determines whether the claimant has a medically severe impairment or
13 combination of impairments. If the claimant does not have a severe impairment or
14 combination of impairments, the disability claim is denied. 20 C.F.R. §§
15 404.1520(a)(4)(ii) and 416.920(a)(4)(ii).

16 If the impairment is severe, the evaluation proceeds to step three, which
17 compares the claimant's impairment to a number of listed impairments
18 acknowledged by the Commissioner to be so severe as to preclude substantial
19 gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii) and 416.920(a)(4)(iii); see also
20 20 C.F.R. §§ 404, Subpt. P, App. 1 and 416, Subpt. I, App. 1. If the impairment
21

1 meets or equals one of the listed impairments, the claimant is conclusively
2 presumed to be disabled. 20 C.F.R. §§ 404.1520(a)(4)(iii) and 416.920(a)(4)(iii).

3 Before proceeding to step four, the claimant's RFC is assessed. 20 C.F.R.
4 §§ 404.1545(a)(1) and 416.945(a)(1). An individual's RFC is the ability to do
5 physical and mental work activities on a sustained basis despite limitations from
6 any impairments. 20 C.F.R. §§ 404.1545(a)(1) and 416.945(a)(1).

7 If the impairment is not one conclusively presumed to be disabling, the
8 evaluation proceeds to step four, where the ALJ determines whether the
9 impairment prevents the claimant from performing work she has performed in the
10 past. If the claimant is able to perform her previous work, the claimant is not
11 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv) and 416.920(a)(4)(iv).

12 If the claimant cannot perform her previous work, the final step considers
13 whether the claimant is able to perform other work in the national economy in light
14 of her RFC, age, education, and past work experience. 20 C.F.R. §§
15 404.1520(a)(4)(v) and 416.920(a)(4)(v).

16 At step five, the burden shifts to the Commissioner to show that (1) the
17 claimant can make an adjustment to other work, and (2) specific jobs exist in the
18 national economy which the claimant can perform. *Batson v. Comm'r of Soc. Sec.*
19 *Admin.*, 359 F.3d 1190, 1193-1194 (2004).

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21 / / /

ISSUES

Ms. Snow alleges that the ALJ committed reversible error by (1) improperly rejecting the medical opinion evidence; (2) failing to properly make a step four determination; and (3) failing to properly make a step five determination.

DISCUSSION

I. Rejection of Medical Opinion Evidence

Ms. Snow argues that the ALJ failed to properly consider and weigh the medical opinions expressed by Dr. McClelland and Ms. Champoux. ECF No. 17 at 10-13.

A. Jesse McClelland, M.D.

Ms. Snow first asserts that the ALJ failed to properly weight the opinion of Dr. McClelland. ECF No. 17 at 11-12.

In weighing medical source opinions, the ALJ should distinguish between three different types of physicians: (1) treating physicians, who actually treat the claimant; (2) examining physicians, who examine but do not treat the claimant; and, (3) nonexamining physicians who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). The ALJ should give more weight to the opinion of a treating physician than to the opinion of an examining physician. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). The ALJ should give more weight to the opinion of an examining physician than to the opinion of a nonexamining physician. *Id.*

1 When a treating physician's opinion is not contradicted by another
2 physician, the ALJ may reject the opinion only for "clear and convincing" reasons.
3 *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991). When a treating
4 physician's opinion is contradicted by another physician, the ALJ is only required
5 to provide "specific and legitimate reasons" for rejecting the opinion. *Murray v.*
6 *Heckler*, 722 F.2d 499, 502 (9th Cir. 1983). Likewise, when an examining
7 physician's opinion is not contradicted by another physician, the ALJ may reject
8 the opinion only for "clear and convincing" reasons. *Lester*, 81 F.2d at 830. When
9 an examining physician's opinion is contradicted by another physician, the ALJ is
10 only required to provide "specific and legitimate reasons" for rejecting the opinion.
11 *Id.* at 830-831.

12 The specific and legitimate standard can be met by the ALJ setting out a
13 detailed and thorough summary of the facts and conflicting clinical evidence,
14 stating her interpretation thereof, and making findings. *Magallanes v. Bowen*, 881
15 F.2d 747, 751 (9th Cir. 1989). The ALJ is required to do more than offer her
16 conclusions, she "must set forth [her] interpretations and explain why they, rather
17 than the doctors', are correct." *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir.
18 1988).

19 On May 21, 2011, Dr. McClelland completed an evaluation of Ms. Snow.
20 ECF No. 10-7 at 131-136, Tr. 485-490. Dr. McClelland reviewed a psychiatric
21 evaluation from October 2008 and an unidentified medical clinic note, conducted a

1 clinical interview, and completed a mental status examination. ECF No. 10-7 at
2 131-134, Tr. 485-488.

3 Dr. McClelland diagnosed Ms. Snow with major depressive disorder, PTSD,
4 ADHD, and amphetamine dependence in full sustained remission. ECF No. 10-7
5 at 134, Tr. 488. Dr. McClelland opined that Ms. Snow (1) should not be managing
6 her own funds, (2) should be able to perform simple and repetitive tasks, but may
7 struggle with detailed and complex tasks, (3) may need special additional
8 instructions to complete her work activities, (4) may struggle to interact with
9 coworkers and the public, (5) would likely struggle to maintain regular attendance
10 in the workplace, and (6) may struggle to deal with the usual stress encountered in
11 the workplace. ECF No. 10-7 at 135-136, Tr. 489-490.

12 The ALJ gave Dr. McClelland's opinion "limited weight" because it was
13 inconsistent with (1) Ms. Snow's longitudinal treatment history, (2) Ms. Snow's
14 performance on mental status examinations, (3) Ms. Snow's reported independent
15 daily activities, and (4) Ms. Snow's ability to get her son to school and attend her
16 appointments. ECF No. 10-2 at 20, Tr. 19.

17 The ALJ's first three reasons for rejecting Dr. McClelland's opinion do not
18 meet the specific and legitimate standard. Simply stating that Ms. Snow's
19 treatment history, mental status examinations, or daily activities are inconsistent
20 with an examining physician's opinion alone is not enough. *See Embrey*, 849 F.2d
21 at 421 (An ALJ stating that the medical opinions are not supported by sufficient

1 objective findings or are contrary to the preponderant conclusions mandated by the
2 objective findings without more does not meet the specific and legitimate
3 standard). The ALJ is required to do more than offer her conclusions, she “must
4 set forth [her] interpretations and explain why they, rather than the doctors’, are
5 correct.” *Id.*

6 Here, the ALJ discussed Ms. Snow’s treatment history, performance on
7 mental status examinations, and daily activities in her credibility determination.
8 ECF No. 10-2 at 19-20, Tr. 18-19. Then, the ALJ stated that “[f]or the same
9 reasons (i.e. the claimant’s longitudinal treatment history, her performance on
10 mental status examinations, and her independent daily activities), I have given
11 limited weight” to Dr. McClelland’s consultative psychological opinion. ECF No.
12 10-2 at 20, Tr. 19. The ALJ included these reasons in parenthesis and nothing
13 more. She did not explain why the longitudinal treatment history, mental status
14 examinations, or the reported daily activities were inconsistent with Dr.
15 McClelland’s opinion. Therefore, these reasons to not meet the specific and
16 legitimate standard.

17 The ALJ’s fourth reason included more specifics. The ALJ found that Dr.
18 McClelland’s opinion that Ms. Snow would struggle to maintain regular attendance
19 was inconsistent with Ms. Snow’s ability “to get up and get her son to school every
20 day on time, and to even correct his attendance problems. There is also no
21 indication that the claimant has had any problems attending her various

1 appointments.” ECF No. 10-2 at 20, Tr. 19. The ALJ may consider a claimant’s
2 daily activities that “may be seen as inconsistent with the presence of a condition
3 which would preclude all work activity.” *Curry v. Sullivan*, 925 F. 2d 1127, 1130
4 (9th Cir. 1991).

5 Here, Dr. McClelland opined that Ms. Snow “would likely struggle to
6 maintain regular attendance in the workplace . . . In addition, she has had
7 increasingly difficult time leaving the house unless necessary related to
8 posttraumatic stress disorder. During depressive episodes, it is practically
9 impossible for her to get out of the house.” ECF No. 10-7 at 135-136, Tr. 489-499.
10 Yet in her evaluation report, Dr. McClelland referenced Ms. Snow’s practice of
11 attending appointments, attending Alcoholics Anonymous or Narcotics
12 Anonymous, and meeting her son to walk him home from school. ECF No. 10-7 at
13 134, Tr. 487.

14 At her hearing, Ms. Snow testified that her daily routine included getting up
15 and walking her son to school and picking her son up from school. ECF No. 10-2
16 at 38, Tr. 37. She further testified that when she walked her son to school, he
17 arrived on time. ECF No. 10-2 at 39, Tr. 38. She explained that the year prior, the
18 school was concerned with her son being tardy, but she was able to correct the
19 situation. ECF No. 10-2 at 39-40, Tr. 38-39. Thus, the ALJ’s finding that Ms.
20 Snow’s reported ability to maintain a schedule was inconsistent with Dr.

1 McClelland's opinion is supported by substantial evidence and is a legally
2 sufficient reason to reject Dr. McClelland's opinion.

3 Because the ALJ provided a legally sufficient reason to reject Dr.
4 McClelland's opinion, any errors resulting from the ALJ's first three reasons are
5 harmless errors. *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (an
6 error is harmless when "it is clear from the record that the . . . error was
7 inconsequential to the ultimate nondisability determination").

8 **B. Peggy Champoux, MSW**

9 Next, Ms. Snow challenges the weight given to the opinion of Ms.
10 Champoux. ECF No. 17 at 12-13

11 When it comes to opinion evidence, there is a distinction between acceptable
12 medical sources and other sources. *See* S.S.R. 06-03p. "Accepted medical
13 sources" include licensed physicians, licensed psychologists, licensed optometrists,
14 licensed podiatrists, and qualified speech-language pathologists. 20 C.F.R. §§
15 404.1513(a), 416.913(a). "Other sources" include nurse practitioners, physicians'
16 assistants, therapists, teachers, social workers, spouses and other non-medical
17 sources. 20 C.F.R. §§ 404.1513(d), 416.913(d).

18 While the ALJ is required to consider observations by "other sources"
19 regarding how an impairment affects a claimant's ability to work, *Id.*, the ALJ can
20 disregard opinion evidence from an "other source," by setting forth reasons "that
21 are germane to each witness." *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir.

1 1996). Ms. Champoux is a social worker, and, therefore, she is not an “accepted
2 medical source,” but an “other source.” As such, to reject her opinion the ALJ was
3 only required to provide germane reasons.

4 On March 24, 2011, Ms. Champoux opined that Ms. Snow was unable to
5 participate in work, noting problems with concentration and pressured speech.
6 ECF No. 10-7 at 3, Tr. 357. Ms. Champoux opined that Ms. Snow’s condition
7 would limit her ability to work for twelve months. ECF No. 10-7 at 4, Tr. 358.
8 Additionally, on May 12, 2011, Ms. Champoux told Ms. Snow it was too early for
9 her to return to work, stating that with “the demands of work i.e. change in routine,
10 affect on sleep that she could experience a return of symptoms.” ECF No. 10-7 at
11 171, Tr. 525.

12 The ALJ gave Ms. Champoux’s opinions “limited weight” because it was
13 inconsistent with Ms. Snow’s longitudinal treatment history, performance on
14 mental status examinations, and reported independent daily activities. ECF No.
15 10-2 at 20, Tr. 19. While these reasons do not meet the specific and legitimate
16 standards, they do qualify as germane reasons. Therefore, the ALJ supported her
17 rejection of Ms. Champoux’s opinion with legally sufficient reasons.

18 **II. Step Four Determination**

19 Ms. Snow challenges the ALJ’s step four determination. ECF No. 17 at 13-
20 14. Ms. Snow argues the ALJ erred in her step four determination by (1) failing to
21 include all of Ms. Snow’s limitations in the RFC assessment; (2) failing to identify

1 the specific demands of Ms. Snow's past relevant work; and (3) failing to compare
2 those specific demands with Ms. Snow's RFC. ECF No. 17 at 14.

3 **A. Requirements for a Step Four Finding**

4 The claimant has the burden of proving she can no longer perform past
5 relevant work. 20 C.F.R. §§ 404.1512(a), 404.1520(f), 416.912(a), 416.920(f);
6 *Tackett*, 180 F.3d at 1098-1099. To find that a claimant has the capacity to
7 perform past relevant work, the ALJ must make the following findings of fact: (1)
8 the individual's RFC; (2) the physical and mental demands of the past
9 job/occupation; (3) that the individual's RFC would permit a return to her past job
10 or occupation. S.S.R. 82-62.

11 **1. RFC**

12 The RFC is "the most [a claimant] can still do despite [her] limitations." 20
13 C.F.R. § 416.945(a); *see also* 20 C.F.R. Part 404, Subpart P, Appendix 2, §
14 200.00(c) (defining the RFC as the "maximum degree to which the individual
15 retains the capacity for sustained performance of the physical-mental requirements
16 of jobs."). In making the RFC determination, the ALJ weighs medical and other
17 source opinions and considers the claimant's credibility and ability to perform
18 daily activities. *See, e.g., Bray v. Comm'r, Soc. Sec. Admin.*, 554 F.3d 1219, 1226
19 (9th Cir. 2009).

20 First, Ms. Snow argues that the ALJ erred by not including limitations from
21 Dr. McClelland and Ms. Champoux in the RFC determination. ECF No. 17 at 14.

1 As discussed above, the ALJ provided legally sufficient reasons to give their
2 opinions “limited weight.” Therefore, the ALJ did not err by excluding the
3 limitations contained in their opinions from Ms. Snow’s RFC.

4 Second, Ms. Snow argues that the ALJ erred by not limiting her to sedentary
5 work as opined by Patricia Kraft, Ph.D. ECF No. 17 at 14. On December 22,
6 2011, Dr. Kraft reviewed the record and opined that Ms. Snow was capable of non-
7 complex, multi-step repetitive tasks with occasional co-worker coordination and
8 occasional wane of attention and concentration due to psychiatric symptoms; Ms.
9 Snow will lose focus, become disorganized, erratic, and inattentive if tasks become
10 too demanding; Ms. Snow would do best with limited public interaction and
11 superficial coworker and supervisors or social interactions; Ms. Snow can be
12 pleasant, polite, and cooperative; and Ms. Snow is able to perform predictable
13 work and adapt to minor variations and change in the workplace. ECF No. 10-3 at
14 38-39, Tr. 108-109. The ALJ gave “significant evidentiary weight” to this opinion.
15 ECF No. 10-2 at 20, Tr. 19.

16 Ms. Snow asserts that Dr. Kraft limited her to sedentary work, which was
17 not included in the ALJ’s RFC determination. ECF No. 17 at 14. Dr. Kraft is a
18 psychologist and did not provide an opinion as to Ms. Snow’s physical capabilities.
19 Dr. Kraft’s signature only appeared in correlation with the psychological
20 limitations. ECF No. 10-3 at 36-39, Tr. 106-109. Ms. Snow supports her assertion
21 with a citation to page 110 of the administrative record. ECF No. 17 at 14. But

1 page 110 of the administrative record shows that Ms. Snow was not limited in her
2 physical capabilities. ECF No. 10-3 at 40, Tr. 110. The strength factors of the
3 physical RFC were deemed to be Heavy/Very Heavy and the disability adjudicator
4 applied S.S.R. 85-15. ECF No. 10-3 at 40-41, Tr. 110-111. S.S.R. 85-15 can only
5 be applied when no physical limitations are present in the RFC. *See Roberts v.*
6 *Shalala*, 66 F.3d 179, 183 (9th Cir. 1995). Therefore, the ALJ did not err in
7 limiting Ms. Snow to light work instead of sedentary work.

8 Third, Ms. Snow argues that the ALJ erred by not including limitations from
9 Richard Kaspar, Ph.D. in the RFC. ECF No. 17 at 16. On June 28, 2011, Dr.
10 Kaspar reviewed the record and opined that Ms. Snow was capable of non-
11 complex, multi-step repetitive tasks with occasional co-worker coordination and
12 occasional wane of attention and concentration due to psychiatric symptoms; Ms.
13 Snow will lose focus, become disorganized, erratic, and inattentive if tasks become
14 too demanding; Ms. Snow would do best with limited public interaction and
15 superficial coworker and supervisors or social interactions; Ms. Snow can be
16 pleasant, polite, and cooperative; and Ms. Snow is able to perform predictable
17 work and adapt to minor variations and change in the workplace. ECF No. 10-3 at
18 12-14, Tr. 82-84. The ALJ gave “significant evidentiary weight” to this opinion.
19 ECF No. 10-2 at 20, Tr. 19.

20 Ms. Snow argues that since the ALJ gave significant weight to Dr. Kaspar’s
21 opinion, the ALJ erred by not including her potential to lose focus, become

1 disorganized, erratic, and inattentive in the RFC. ECF No. 17 at 16. This is a
2 misrepresentation of the record. Dr. Kaspar limited Ms. Snow to non-complex,
3 multi-step repetitive tasks, stating that Ms. Snow “[w]ill lose focus, become
4 disorganized, erratic, and inattentive *if tasks become too demanding*. ECF No. 10-
5 3 at 13, Tr. 83 (emphasis added). Dr. Kaspar’s reference to a loss of focus,
6 disorganization, erratic behavior, and inattention is qualified as a result of Ms.
7 Snow working beyond her RFC. The ALJ’s RFC determination included a
8 limitation to “non-complex but multistep tasks.” ECF No. 10-2 at 16, Tr. 15.
9 Therefore, the ALJ included the necessary limitation to address Ms. Snow’s
10 potential to lose focus, become disorganized, erratic, and inattentive in her RFC.

11 The Court concludes that ALJ’s RFC determination is supported by
12 substantial evidence and free of legal error.

13 **2. Specific Demands of Past Relevant Work**

14 Ms. Snow alleges that the ALJ failed to identify the specific demands of Ms.
15 Snow’s past relevant work. ECF No. 17 at 14.

16 At Step Four, the ALJ must make a finding as to the actual functional
17 demands and job duties of a particular past relevant job or the functional demands
18 and job duties of the occupation as generally required by employers throughout the
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1 national economy. S.S.R. 82-61.² Social Security Regulations name two sources
2 of information that may be used to define a claimant's past relevant work as
3 actually performed: a properly completed vocational report, S.S.R. 82-61, and the
4 claimant's own testimony, S.S.R. 82-41. In contrast, the Dictionary of
5 Occupational Titles is usually the best source for how a job is generally performed.
6 *Pinto v. Massanari*, 249 F.3d 840, 845 (9th Cir. 2001).

7 In her decision, the ALJ did not discuss Ms. Snow's past relevant work as
8 actually performed, but did set forth Ms. Snow's past relevant work as generally
9 performed with Dictionary of Occupational Title codes, exertional classifications,
10 and specific vocational preparation (SVP) classifications. ECF No. 10-2 at 21, Tr.
11 20. Considering the ALJ relied on the Dictionary of Occupational Titles, which is
12 the best source for how a job is generally performed, the ALJ made specific
13 findings as to the functional demands of Ms. Snow's past relevant work as

14 ²Although they do not carry the force of law, Social Security Rulings are
15 "binding on all components of the Social Security Administration." 20 C.F.R. §§
16 402.35(b)(1) and (2). Such rulings "reflect the official interpretation of the [Social
17 Security Administration] and are entitled to some deference as long as they are
18 consistent with the Social Security Act and regulations." *Molina v. Astrue*, 674
19 F.3d 1104, 1113 n.5 (9th Cir. 2012) (citations and internal quotation marks
20 omitted).

1 generally performed. The ALJ was not required to discuss Ms. Snow's past
2 relevant work as actually performed. *Pinto*, 249 F.3d at 845 ("We have never
3 required explicit findings at step four regarding a claimant's past relevant work
4 both as generally performed *and* as actually performed. The vocational expert
5 merely has to find that a claimant can or cannot continue his or her past relevant
6 work as defined by the regulations"). Thus, the ALJ fulfilled her second required
7 factual finding free of legal error.

8 **3. Specific Demands of Past Relevant Work and the RFC**

9 Ms. Snow alleges that the ALJ failed to adequately compare the specific
10 demands of Ms. Snow's past relevant work to the RFC as determined by the ALJ.
11 ECF No. 17 at 14.

12 The Ninth Circuit has held that requiring the ALJ to make specific findings
13 on the record at each phase of the step four analysis allows for meaningful judicial
14 review. *Pinto*, 249 F.3d at 487. When the ALJ "makes findings only about the
15 claimant's limitations, and the remainder of the step four assessment takes place in
16 the [vocational expert's] head, we are left with nothing to review." *Id.* quoting
17 *Winfrey v. Chater*, 92 F.3d 1017, 1025 (10th Cir. 1996).

18 In her decision, the ALJ stated "[i]n comparing the claimant's residual
19 functional capacity with the physical and mental demands of her past relevant
20 work as a housekeeper, I find that the claimant is able to perform it as actually and
21

1 generally performed.” ECF No. 10-2 at 21, Tr. 20. Ms. Snow asserts this is not a
2 sufficient analysis. ECF No. 17 at 14.

3 Here, the analysis concerning Ms. Snow’s past relevant work as generally
4 performed did not occur in the vocational expert’s head. At the hearing, the
5 vocational expert testified that based on the ALJ’s hypothetical, which mirrored
6 the RFC determination, Ms. Snow could perform the occupation of housekeeper as
7 described in the Dictionary of Occupational Titles. ECF No. 10-2 at 69-70, Tr. 68-
8 69. Furthermore, the vocational expert stated that his testimony regarding this
9 hypothetical was consistent with the information in the Dictionary of Occupational
10 Titles and its companion publication, Selected Characteristics of Occupations.
11 ECF No. 10-2 at 71, Tr. 70. Considering the Dictionary of Occupational Titles is
12 usually the best source for how a job is generally performed and the vocational
13 expert’s testimony did not vary from the Dictionary of Occupational Titles, the
14 comparison between the requirements of housekeeper as generally performed with
15 the RFC determination did not occur solely in the vocational expert’s head. The
16 Dictionary of Occupational Titles is available in print for Ms. Snow to compare to
17 the RFC determination. Thus, the ALJ fulfilled her third factual finding.

18 However, the ALJ’s step four finding was that Ms. Snow could perform her
19 past relevant work as a housekeeper “as actually and generally performed.” ECF
20 No. 10-2 at 21, Tr. 20. Yet, the ALJ failed to make the necessary findings of facts
21 as to Ms. Snow’s past relevant work as actually performed. Therefore, the ALJ’s

determination as to Ms. Snow's past relevant work as a housekeeper as actually performed is in error. However, this is harmless error because there are no requirements for "explicit findings at step four regarding a claimant's past relevant work both as generally performed *and* as actually performed. The vocational expert merely has to find that a claimant can or cannot continue his or her past relevant work as defined by the regulations." *Pinto*, 249 F.3d at 845; *See also Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (an error is harmless when "it is clear from the record that the . . . error was inconsequential to the ultimate nondisability determination").

Thus, the Court finds that the step four determination was free of error as to Ms. Snow's ability to perform past relevant work as generally performed in the national economy.

III. Step Five Determination

Ms. Snow challenges the alternative step five determination made by the ALJ. ECF No. 17 at 15-16. Ms. Snow asserts that the testimony of the vocational expert was based on an incomplete hypothetical that did not include all of her limitations. ECF No. 17 at 15.

An ALJ is only required to present the vocational expert with those limitations the ALJ finds to be credible and supported by the evidence. *Osenbrock v. Apfel*, 240 F.3d 1157, 1165-1166 (9th Cir. 2001). As addressed in detail above, the ALJ's RFC determination was supported by substantial evidence and free of

1 legal error. Therefore, the RFC contained all limitations supported by substantial
2 evidence and the step five determination was additionally free of legal error.

3 **CONCLUSION**

4 Having reviewed the record and the ALJ's findings, the Court finds the
5 ALJ's decision is supported by substantial evidence and free of harmful legal error.

6 Accordingly, **IT IS ORDERED:**

7 1. Defendant's Motion for Summary Judgment, **ECF No. 18**, is
8 **GRANTED.**

9 2. Ms. Snow's Motion for Summary Judgment, **ECF No. 17**, is
10 **DENIED.**

11 The District Court Clerk is directed to file this Order and provide a copy to
12 counsel for Ms. Snow and Defendant. **Judgment shall be entered for Defendant**
13 **and the file shall be CLOSED.**

14 **DATED** this 10th day of March 2016.

15
16 s/ Rosanna Malouf Peterson
17 ROSANNA MALOUF PETERSON
18 United States District Judge
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20
21